THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 15916 of 1997

Date:12-09-2007

Between:

Vemula Subbamma

...PETITIONER

AND

The Revenue Divisional Officer, Jammalamadugu and another

..

RESPONDENTS

ORDER:

The petitioner seeks a writ of mandamus to direct the respondents to restore the lands assigned to the petitioner of an extent of Ac.03.24 cents in Sy.No.57/1 in Madirepalle village, Duvvur mandal, Kadapa District holding that the order of the 1st respondent in Ref.A.4272/94,dated 04.04.1997 as null and void.

It is the case of the petitioner that she is a landless poor and eking out her livelihood by attending to the agricultural work and she is resident of Madirepalle of Duvvur mandal, Kadapa District. As the petitioner is a landless poor, the second respondent assigned the land of an extent of Ac.3.24 cents in Sy.No.57/1 of Madirepalle village, Duvvur mandal, Kadapa District to the petitioner vide DKT patta No.250/90, dated 14.08.1980. After assignment, the petitioner along with her husband reclaimed the said land and made it suitable for cultivation and thereby eking out their livelihood by raising the crops in the said land.

While so, in the year 1987, the petitioner left for Proddatur as her brother involved in fire accident and was hospitalized. When the petitioner returned to the said village from Proddatur in the year 1989, she found one Kora Bhargava Rami Reddy was in possession of the said land and he did not allow her to cultivate the said land on the ground that he has purchased the same. It is stated that she never sold the said land and her representations made to the revenue authorities were in vain and therefore, she has constrained to file O.S.No.8 of 1991 on the file of the Principal Junior Civil Judge, Proddatur against the said Rami Reddy and two others seeking declaration of her

possession and title over the said land and the said suit was decreed on 21.10.1992. Aggrieved by the same, the said Rami Reddy filed A.S.No.26 of 1992 on the file of the Subordinate Judge, Proddatur and the said Court refused to grant stay and dismissed the said application in I.A.No.83 of 1992 by order, dated 05.10.1993. Thereafter, the petitioner filed E.P.No.27 of 1993 in O.S.No.8 of 1991 and the Court handed over the possession of the land to the petitioner on 22.06.1994. Thereafter, again the said Rami Reddy trespassed into the said land and therefore, the petitioner constrained to file a criminal case and the said Rami Reddy was convicted in C.C.No.17 of 1995 on the file of the Judicial Magistrate of the First Class, Proddatur.

Thus, it is the case of the petitioner that she is fighting tooth and nail to safeguard her rights and possession of the land with the said Rami Reddy who tried to grab the assigned land of the petitioner by creating false documents. As the said Rami Reddy could not succeed in his attempts and as he was convicted, he resorted to make a complaint before the revenue authorities on the ground that the petitioner violated the provisions of Section 3 (1) and (2) of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (for short 'the Act').

Based on the complaint of the said Rami Reddy only, the second respondent initiated action in proceedings Ref.B.830/92, dated 05.05.1994 resuming the said assigned land. Aggrieved by the same, the petitioner filed an appeal before the first respondent and the first respondent dismissed the appeal by the impugned order, dated 04.04.1997.

Heard the learned counsel for the petitioner and the respondents.

The perusal of the order, dated 04.04.1997 passed by the first respondent goes to show that the petitioner placed all the facts

regarding the illegal possession of the land by the said Rami Reddy who is said to have been purchased from the petitioner and the suit filed by the petitioner was decreed and taking the possession over the said land from the said Rami Reddy. But, the first respondent without considering the said aspects came to an erroneous conclusion that the petitioner intentionally sold the said land for monetary consideration in favour of the said Rami Reddy vide registered document No.2230/85, dated 13.12.1985 and left their village and settled in Proddatur and her name was included in the voters list and therefore, the resumption order is illegal and void. It is further held that the petitioner has not taken any strain for development of the said land and he did not spend any amount to get the land fit for cultivation. But, the said Rami Reddy alone developed the said land. As the petitioner violated the conditions imposed in 'D' form patta, which attracts the provisions of Section 3 of the Act, the petitioner is not entitled for restoration of the said land as she has sold the same.

This Court while admitting the writ petition on 22.07.1997 granted interim stay of the impugned order.

It is not in dispute that the said land is assigned in favour of the petitioner by order of assignment, dated 14.08.1980. Under Section 3 (1) and (2) of the Act, the assigned land cannot be alienated either before or after the commencement of the Act and there is a total prohibition for alienation of the assigned land to the landless poor. Any transfer of the assigned lands to the landless poor made in contravention of the provision of sub-section (1) or sub-section (2) shall be deemed to be null and void as per Section 3(3) of the Act. The provisions of the Act also apply to any Civil Court of any award or order of any other authority. For the breach of the provisions of Section 3 of the Act, it is open for the competent authority i.e. the officer not

below the rank of Mandal Revenue Officer to resume the land and take the possession of the same after evicting the persons in possession. In the instant case, the proceedings have been initiated and the assigned lands have been resumed.

Learned counsel appearing for the petitioner submits that there is no violation of any of the provisions of Section 3 of the Act and even assuming that there is any violation, such land is liable to be restored as per proviso (1)(b) of Section 4 of the Act, the petitioner being original assignee is entitled for restoration of the said land. Under Section 4(1)(b) of the Act after resumption the assigned lands have to be restored to the original assignee or legal heirs even if it is alienated, but if the original assignee or legal heirs transfers for the second time, then only it is open for the government to resume the said lands for the purpose of assigning to the other landless poor.

In support of his contention, the learned counsel for the petitioner relied upon a division bench judgment of this Court in **UPPU PANDAIAH v. THE MANDAL REVENUE OFFICER, SYDAPURAM, NELLORE DISTRICT AND ANOTHER**[1].

Section 4(1)(b) of the Act reads as follows:

" **4. Consequences of breach provisions of Section 3:--**

(1) If in any case, the District Collector or any other officer not below the rank of a (Mandal Revenue Officer) authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order------

(a) xxxxx

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to

Government for assignment to landless poor persons in accordance with the rules for the time being in force;"

While interpreting the Section 4(1)(b) of the Act in the aforesaid judgment, the Division Bench of this Court held as follows:

> "The obvious conclusion to be drawn from the grammatical interpretation of section 4 of the Act is that if the original assignee has committed the error of alienating the assigned land for the first time in his life and if the land is taken possession of by the authorities under section 4 of the Act then it is obligatory on the part of the authorities to restore the said land in favour of the original assignee or his legal heir as the case may be. However, if the original assignee again commits the error of alienation of the land in favour of any other person, then the said land shall not be restored to such original assignee or his legal heir and may be resumed by the Government for purpose of assignment of the said land in favour of another landless poor person. To put it in a nut-shell the principle to be deduced from the above situation is: that it is necessary on the part of the authorities to see whether in the facts and circumstances of the case, they can taken possession of the assigned land after evicting the person in possession in such manner as may be prescribed and if that is done, then they shall assign the land in favour of the original assignee, if the alienation is made by him for the first time, unless it is not reasonably practicable to restore the land in favour of the original assignee or his legal heir."

I have considered the rival contentions. It is not in dispute that the petitioner temporarily left the village in view of the unavoidable circumstances as her brother met with fire accident and was hospitalized and the alleged sale of the assigned land by the petitioner has been disputed by her and in fact, she questioned the same by way of filing the civil suit and the civil Court decreed the said suit. The civil

Court also on execution petition filed by the petitioner, restored the possession of the land in favour of the petitioner. The said Rami Reddy could not succeed in the appeal also. In fact, when the said Rami Reddy trespassed into the said land, he was prosecuted and was convicted. Therefore, having failed in his attempts in the said land, the said Rami Reddy resorted to make a complaint against the petitioner and for the first time, the Mandal Revenue Officer i.e. the second respondent initiated action by order, dated 05.05.1994 for resumption of the said land. The appellate Court i.e. the first respondent has not at all considered the effect of the civil Court decree and execution orders. Without there being any evidence whatsoever, the appellate authority i.e. the first respondent erroneously came to the conclusion that the petitioner did not get the said land fit for cultivation and on the other hand, the said Rami Reddy brought the said land under cultivation. Even assuming that the said Rami Reddy having trespassed into the said land and developed the same, I am of the opinion that the petitioner is entitled for restoration of the possession of the said land as per proviso of Section 4(1)(b) of the Act and as decided by the division bench of this Court in the aforesaid judgment.

For all the aforesaid reasons, I am of the opinion that the impugned order passed by the first respondent is liable to be set aside and the writ petition is to be allowed.

Accordingly, the writ petition is allowed as prayed for.

V.ESWARAIAH, J.

Date:12.09.2007
ccm

[1] 1992(1) APLJ 434 (HC)